

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ADOPTION OF INTERCONNECTION	)	
AGREEMENT PROVISIONS BETWEEN	)	CASE NO.
BELLSOUTH TELECOMMUNICATIONS, INC.	)	2004-00235
AND CINERGY COMMUNICATIONS COMPANY	)	
BY SOUTHEAST TELEPHONE, INC.	)	

O R D E R

On June 8, 2004, SouthEast Telephone, Inc. (“SouthEast”) filed a notice of intent to adopt certain provisions of an interconnection agreement between BellSouth Telecommunications, Inc. (“BellSouth”) and Cinergy Communications Company (“Cinergy”).

The portion of the agreement which SouthEast seeks to adopt was arbitrated pursuant to 47 U.S.C. §§ 251 and 252 and is currently effective. The section which SouthEast seeks to adopt regards the resolution of disputes. It is found at paragraph 11.1 of the interconnection agreement approved by the Commission on April 21, 2003 in Case No. 2001-00432.<sup>1</sup> SouthEast seeks from BellSouth service on the same terms and conditions as BellSouth offers to Cinergy.

SouthEast contends that it is entitled to adopt this portion of an agreement based on the language of 47 U.S.C. § 252(i), which provides that “[a] local exchange carrier

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<sup>1</sup> Case No. 2001-00432, Petition of Cinergy Communications Company for Arbitrations of an Interconnection Agreement With BellSouth Telecommunications, Inc. Pursuant to U.S.C. Section 252.

shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.” BellSouth disagrees that a portion relating to a dispute resolution term should be adoptable.

Approximately one month after SouthEast filed its notice of adoption and BellSouth contested the adoption, the FCC, by order, changed its rules interpreting 47 U.S.C. § 252(i).<sup>2</sup> The rules pursuant to which SouthEast filed its notice, and at the time SouthEast filed its notice, permitted competitive carriers to opt into less than an entire interconnection agreement. The new rules, released July 13, 2004, require competitive carriers to opt into an entire agreement. SouthEast asserts that its adoption notice should be reviewed pursuant to the rules in effect at the time SouthEast filed its notice. BellSouth, on the other hand, contends that the adoption notice was not appropriate under the old interpretation or the new interpretation.

The Commission believes that SouthEast’s adoption notice should be reviewed under the law as it existed when the notice was filed. Dispute resolution procedures which SouthEast seeks are an integral term and condition of a contract and directly relate to the provision of interconnection, service, or network elements. Accordingly, the Commission finds that under the requirements existing when SouthEast filed, this adoption notice should be granted.

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<sup>2</sup> Second Report and Order, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, FCC 04-164 (rel. July 13, 2004).

However, the Commission also finds that, had SouthEast filed its adoption notice after July 13, 2004, the release date of the FCC's new interpretation, it would be rejected. Any adoption notices filed after July 13, 2004 must follow the FCC's new rules.

The Commission, having been otherwise sufficiently advised, HEREBY ORDERS that the request of SouthEast to adopt a portion of the currently effective interconnection agreement between BellSouth and Cinergy is granted for reasons stated herein, effective the date of this Order.

Done at Frankfort, Kentucky, this 29<sup>th</sup> day of September, 2004.

By the Commission

Commissioner W. Gregory Coker did not participate in the deliberations or decision concerning this case.

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and flourishes, positioned above the title 'Executive Director'.

Executive Director